IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 149 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THE COMMISSIONER OF INCOME TAX

Versus

MRINALINI V. SARABHAI

Appearance:

1. INCOME TAX REFERENCE No. 149 of 1992
MR MANISH R BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 26/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions are referred for our opinion under Section 256(1) of the Income-tax Act, 1961 for the assessment year 1982-83 :-

(i) Whether, the Appellate Tribunal is right in law and on facts in holding that there was no transfer in the present case and, therefore, there was no taxable capital gains ?

(ii) Whether the Appellate Tribunal is right in law and on facts in holding that the provisions of sec.40A(3) were not attracted to the payment of Rs.10,875/- ?

2. We have heard Mr Manish R Bhatt, learned standing counsel for the revenue. Mr RK Patel, learned counsel appears for the respondent-assessee and states that although he has already filed his vakalatnama, the cause list does not show his name.

The Office to take appropriate action and to show the appearance of Mr RK Patel for the respondent-assessee.

3. As far as the first question is concerned, our attention has been invited to the decision of this Court in CIT vs. Leena Sarabhai (N.CH), (1996) 221 ITR 520 wherein this Court declined to answer the question on the ground that the position in such type of cases is that there is no transfer of capital assets within the meaning of Section 2(47) of the Income-tax Act, 1961.

In view of the above decision, we decline to answer question No.(i).

4. Coming to question No. (ii), our attention has been invited to the decision of this Court in the case of this very assessee in Income-tax Reference No. 4 of 1992 decided on 1.7.2003 and reported in (2003) 184 CTR (Guj) 122 wherein this Court held that a firm engaged by the assessee to look after her financial affairs having made the payments in question on behalf of the assessee by crossed cheques on the basis of the instructions of the assessee referred to as "Pay Order", the said payments could not be disallowed under Section 40A(3) by misconstruing the so-called "Pay Order" as cash payment.

Following the aforesaid decision, we answer question No.(ii) in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)
sundar/-